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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,134	04/15/2004	ROBERT E. HARMS	9530.48104	3133
22235	7590	02/25/2008	EXAMINER	
MALIN HALEY AND DIMAGGIO, PA 1936 S ANDREWS AVENUE FORT LAUDERDALE, FL 33316				HWANG, VICTOR KENNY
ART UNIT		PAPER NUMBER		
		3764		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/709,134	HARMS, ROBERT E.
	<b>Examiner</b>	<b>Art Unit</b>
	VICTOR K. HWANG	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 November 2007.  
 2a) This action is **FINAL**.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-5,7-10 and 16 is/are pending in the application.  
 4a) Of the above claim(s) 11-15 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-5,7-10 and 16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 29 November 2007 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Drawings***

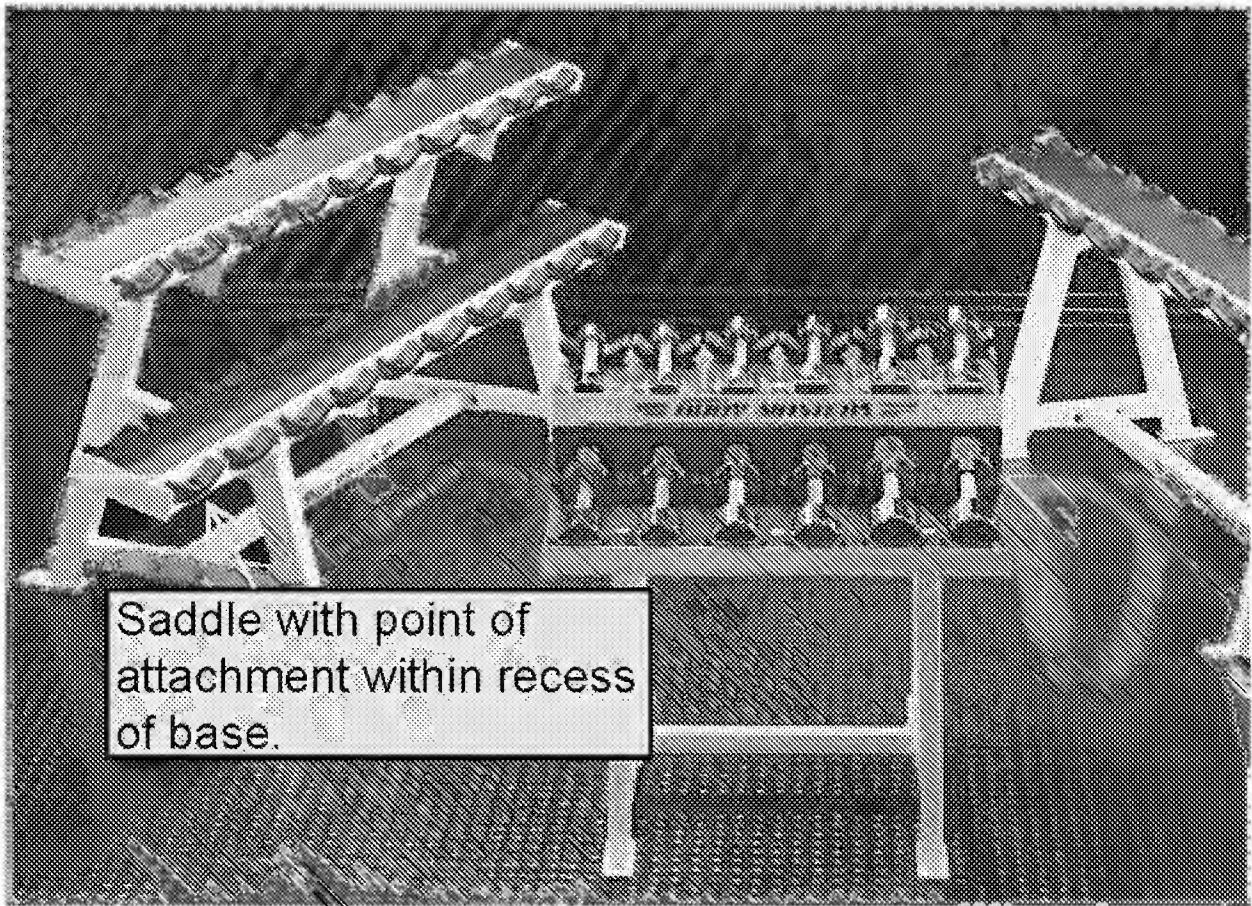
1. The drawings were received on November 29, 2007. These drawings are acceptable.

### ***Response to Arguments***

2. Applicant's arguments filed November 29, 2007 have been fully considered but they are not persuasive. Applicant has cancelled claims 2, 6, 17 and 18, and amended claims 1, 4, 5, 7-10 and 16. Claims 11-15 have been withdrawn from further consideration.

Applicant argues that *Bodymasters* only contains photographs without any detailed description or illustration of particular structure and do not present any form of means for attachment, and especially lack an elongated attachment member located in complementary void in the base portion. Applicant has disclosed in his specification at paragraphs [0006], [0008] and [0009] that it is known in the art to secure saddles with a bolt and nut to angle irons of the frame of a dumbbell rack. Inherently, the saddle and angle iron would have complimentary apertures through which the bolt extends.

*Bodymasters*, enlarged below, discloses a typical dumbbell rack having a plurality of curved saddles arranged in pairs to support dumbbells. A point of attachment can be seen in the base of the saddle and appears to be within a recess of the base. One of ordinary skill in the exercise art would recognize that a bolt or rivet is located within the recess of the base of the saddle and secures the saddle to the angle iron of the rack frame, since Applicant has disclosed that it is old to use a bolt and nut to secure a saddle to an angle iron of a dumbbell rack.



## BE 201, 201B & BE 227B DUMBBELL RACKS

In response to Applicant's argument that *Bodymasters* does not address the problems that Applicant was concerned with, does not render the obvious the Applicant's claimed invention, does not clarify to the Applicant with any detail that an elongated attachment member is used, has not interior wall nor specific structure as claimed, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further states that the secondary references of record do not remedy the deficiencies of *Bodymasters*, but does not provide support for this conclusion with the exception of *Petrone '619*. Applicant argues that there is no correlation to Applicant's design for particular saddle pairs with interior walls which support the dumbbell handles and that the dumbbell handles of *Petrone '619* lay in a totally opposite orientation, in between and parallel to the tray ends.

Firstly, *Petrone '619* discloses a dumbbell support comprising a pair of saddles 50,52. Each saddle has a top surface and an inner end 156,158 relative to a dumbbell 148. Each saddle further includes a gusset 152,154 that are generally vertical elements having an upper end and an interior end attached to the respective inner end of the saddles 50,52. The gussets provide strength to the saddles and aid in proper positioning of a dumbbell with one of the dumbbell's opposite enlarged ends in each of the cradles. This aids in distribution of the weight of the dumbbell between the two cradles and ensures that the bar 160 of the dumbbell spans the distance between the two cradles (col. 4, lines 57-67).

Though Applicant may have different reasons for their design, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Secondly, Applicant's argument that "the dumbbell handle in the '619 reference lays in a totally opposite orientation, in between and parallel to the tray ends" is not understood, since the handle 160 of dumbbell 148 appears to lay between the two saddles 50,52 just as Applicant's saddles would support a dumbbell.

In response to Applicant's argument that there is no discussion or details of the non-marring surfaces or methods of applying, especially with Applicant's claimed structure, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). *Perform Better* discloses a dumbbell rack with saddles encased in rubber to absorb contact from dumbbells. Rubber is considered a non-marring material that provides a non-marring surface. The motivation to combine *Perform Better* with *Bodymasters* and *Petrone* would be to absorb contact between dumbbells and the saddles.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-5, 7, 8, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bodymasters* (BE 201, 201B & BE227B Dumbbell Racks, Mastering the Art of Fitness brochure, received in the USPTO 1994) in view of *Harms* (Applicant's admitted prior art in paragraphs [0006], [0008] and [0009] of the specification), *Petrone* (US Pat. 5,954,619) and *Perform Better* (Pro-Style Dumbbell Rack With Saddles, Perform Better 2003 catalog, page 41). *Bodymasters* discloses dumbbell racks, each comprising a frame having a first row of dumbbell saddles to support a first weighted end of a plurality of dumbbells and second row of dumbbell

saddles located adjacent the first saddles to support a second weighted end of the plurality of dumbbells. Each saddle comprises a generally U-shaped member including a curved element having a top surface, a base portion and an inner end. At least one means for attachment can be seen for each saddle within a recess in the base portion of the saddle.

*Bodymasters* does not disclose each means for attachment having an elongated attachment member located in a complimentary void in the base portions (claims 1 and 16); a generally vertical element having an upper end and an interior end attached to the inner end of the U-shaped member and is silent as to whether the U-shaped member has a non-marring surface for providing contact with a dumbbell to be placed on the saddle (claims 1 and 16); the non-marring surface is unitary in construction (claim 3); the non-marring surface is injection molded onto the U-shaped member (claim 4); the non-marring surface is sprayed upon the U-shaped member (claim 5); the non-marring surface includes polyurethane (claim 10); and a plurality of means for attachment of the saddle to complementary holes in the frame (claims 2, 17 and 18).

*Harms* discloses at paragraphs [0006], [0008] and [0009] that it is known in the art to secure saddles with a bolt and nut to angle irons of the frame of a dumbbell rack. Inherently, the saddle and angle iron would have complimentary apertures through which the bolt extends.

*Bodymasters* discloses a typical dumbbell rack having a plurality of curved saddles arranged in pairs to support dumbbells. A point of attachment can be seen in the base of the saddle and appears to be within a recess of the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made that a bolt is located within the recess of the base of the saddle of *Bodymasters* to secure the saddle to the angle iron of the rack frame,

since *Harms* has disclosed that it is known to use a bolt and nut to secure a saddle to an angle iron of a dumbbell rack.

*Petrone* discloses a pair of dumbbell saddles 50,52 each comprising a top surface and an inner end 156,158. Each saddle further includes gussets 152,154 that are generally vertical elements having an upper end and an interior end attached to the respective inner end of the saddles to provide strength to the cradles and to aid in ensuring proper positioning of a dumbbell with one of its opposite enlarged ends in each of the cradles. This aids in even distribution of the weight of the dumbbell between the two cradles and ensures that the bar 160 of the dumbbell spans the distance between the two cradles (col. 4, lines 57-67).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cradles of *Bodymasters* and *Harms* with gussets attached to the inner ends of the saddles, since *Petrone* discloses that gussets provide strength to the cradles, aid in ensuring proper positioning of a dumbbell with one of its opposite enlarged ends in each of the cradles, aids in even distribution of the weight of the dumbbell between the two cradles, and ensures that the bar of the dumbbell spans the distance between the two cradles.

*Bodymasters* in view of *Harms* and *Petrone* does not disclose that a non-marring surface is located on the U-shaped member.

*Perform Better* discloses a dumbbell rack with saddles that are encased in rubber to absorb contact from dumbbells. Rubber is considered to be a non-marring material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to encase the dumbbell saddles of *Bodymasters* in view of *Harms* and

*Petrone* with rubber, since *Perform Better* teaches that a rubber encased dumbbell saddle absorbs impact from dumbbells.

With regard to claim 10, wherein the non-marring surface includes polyurethane, rubber material is well known in the art to comprise synthetic rubber material that includes polyurethane material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a polyurethane rubber material for the non-marring surface, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With regard to claims 3-5, wherein the non-marring surface is of unitary construction by injection molding onto the U-shaped member or by spraying upon the U-shaped member, the phrase “rubber encased” is taken to mean a core with rubber material surrounding the core. It is well known in the exercise art that encasing a core with rubber material entails surrounding the core with a unitary layer of rubber material. The process of injection molding and spraying are being treated as a product by process limitation. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113. Thus, even though *Bodymasters*, *Petrone* and *Perform Better* are silent as to the process used to apply the rubber material, it appears that the product of *Bodymasters* in view of *Petrone* and *Perform Better* would be the same or similar as that claimed.

With further regard to claims 1 and 16, wherein a plurality of means for attachment of the saddle to the frame is located in the base portion, duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, it would have been a matter of design choice to provide a second elongated attachment member in the base portion to connect to a second complementary cavity in the frame. This would provide added strength to the joint between the saddle and the frame and also prevent rotation of the saddle relative to the frame.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Bodymasters* (BE 201, 201B & BE227B Dumbbell Racks, Mastering the Art of Fitness brochure, received in the USPTO 1994) in view of *Harms* (Applicant's admitted prior art in paragraphs [0006], [0008] and [0009] of the specification), *Petrone* (US Pat. 5,954,619) and *Perform Better* (Pro-Style Dumbbell Rack With Saddles, Perform Better 2003 catalog, page 41) as applied to claim 1 above, and further in view of *Shifferaw* (US Pat. 7,018,325 B2). *Bodymasters* in view of *Harms*, *Petrone* and *Perform Better* discloses the invention as claimed except for the vertical element further comprising a divot for accommodating a handle on the dumbbell.

*Shifferaw* discloses saddles 13,69 comprising generally vertical elements having an upper end and an interior end attached to ends of a weight support member. The generally vertical elements further comprise divots that accommodate the handle on the weighted bar and also the ends of the weighted bar (see Fig. 8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the generally vertical elements of the saddles of *Bodymasters* in

view of *Petrone* and *Perform Better* with divots, since *Shifferaw* shows divots to accommodate the handle of the weighted bar.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR K. HWANG whose telephone number is (571) 272-4976. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn H. Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. K. H./  
Examiner, Art Unit 3764

/LoAn H. Thanh/  
Supervisory Patent Examiner, Art Unit 3764